

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALIM URMANCHEEV,
Plaintiff,

v.

R. NDOH, et al.,
Defendants.

Case No. 1:21-cv-00255-JLT-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE¹

(Doc. No. 18)

FOURTEEN-DAY OBJECTION PERIOD

Pending before the Court for screening under 28 U.S.C. § 1915A is Plaintiff's First Amended Complaint. (Doc. No. 18, "FAC"). For the reasons set forth below, the undersigned recommends the district court dismiss the FAC because it fails to state any cognizable constitutional claim.

SCREENING REQUIREMENT

A plaintiff who commences an action while in prison is subject to the Prison Litigation Reform Act ("PLRA"), which requires, *inter alia*, the court to screen a complaint that seeks relief against a governmental entity, its officers, or its employees before directing service upon any defendant. 28 U.S.C. § 1915A. This requires the court to identify any cognizable claims and dismiss the complaint, or any portion, if it is frivolous or malicious, if it fails to state a claim upon

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 which relief may be granted, or if it seeks monetary relief from a defendant who is immune from
2 such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

3 At the screening stage, the court accepts the factual allegations in the complaint as true,
4 construes the complaint liberally, and resolves all doubts in the plaintiff's favor. *Jenkins v.*
5 *McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir.
6 2003). The Court's review is limited to the complaint, exhibits attached, and materials
7 incorporated into the complaint by reference, and matters of which the court may take judicial
8 notice. *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014); *see also* Fed. R. Civ.
9 P. 10(c). A court does not have to accept as true conclusory allegations, unreasonable inferences,
10 or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
11 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual
12 basis. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

13 The Federal Rules of Civil Procedure require only that a complaint include "a short and
14 plain statement of the claim showing the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2).
15 Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient
16 factual detail to allow the court to reasonably infer that each named defendant is liable for the
17 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*,
18 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
19 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
20 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not
21 required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
22 statements, do not suffice," *Iqbal*, 556 U.S. at 678 (citations omitted), and courts "are not required
23 to indulge unwarranted inferences," *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir.
24 2009) (internal quotation marks and citation omitted).

25 If an otherwise deficient pleading can be remedied by alleging other facts, a pro se litigant
26 is entitled to an opportunity to amend their complaint before dismissal of the action. *See Lopez v.*
27 *Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d
28 245, 248 (9th Cir. 1995). However, it is not the role of the court to advise a pro se litigant on how

1 to cure the defects. Such advice “would undermine district judges’ role as impartial
 2 decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131
 3 n.13. Furthermore, the court in its discretion may deny leave to amend due to “undue delay, bad
 4 faith or dilatory motive of the part of the movant, [or] repeated failure to cure deficiencies by
 5 amendments previously allowed” *Carvalho v. Equifax Info. Svcs., LLC*, 629 F.3d 876, 892
 6 (9th Cir. 2010).

7 **BACKGROUND AND SUMMARY OF OPERATIVE PLEADING**

8 Plaintiff, a former prisoner proceeding pro se and *in forma pauperis*, initiated this action
 9 by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). On April 10, 2023, the
 10 undersigned screened Plaintiff’s complaint and found that it failed to state any cognizable
 11 constitutional claim. (*See* Doc. No. 14). After the Court granted an extension of time, Plaintiff
 12 filed a FAC. (Doc. No. 18).

13 The events giving rise to the FAC took place at Avenal State Prison (“ASP”). (*See*
 14 *generally id.*). The named Defendants include the following ASP staff: (1) R. Ndoh, former
 15 Warden at ASP; (2) P. Vera, Chief Deputy Warden at ASP; (3) D. Groves, Associate Warden and
 16 Chief Disciplinary Officer at ASP; (4) D. Crenshaw, Correctional Officer at ASP; (5) Barker,
 17 Correctional Officer at ASP; (6) K. Clinton, Correctional Officer at ASP; (7) M. Voong, Chief of
 18 the Office of Appeals; (8) R. Briggs, Appeals Examiner at the Office of Appeals; (9) J. Cervantes,
 19 Correctional Officer at ASP; (10) Boado, Correctional Officer at ASP; (11) A. Cruz, Correctional
 20 Officer at ASP; (12) M. Dutra, Correctional Officer at ASP; (13) K. Donaldson, Correctional
 21 Officer at ASP; and (14) P. Johnson, Correctional Officer at ASP. (*Id.* at 2-4). The following
 22 facts are presumed to be true at this stage of the screening process.

23 Claim 1 – Due Process Violation and Cruel and Unusual Punishment

24 On January 6, 2017, Defendant Dutra allegedly found alcohol under Plaintiff’s bunk at
 25 ASP and filed a Rule Violation Report (“RVR”) based on the violation. (*Id.* at 6 ¶ 28).
 26 Defendant Dutra then destroyed the alleged alcohol. (*Id.* ¶ 29). The same day, Defendant
 27 Cervantez reviewed the RVR and “affirmed” it “without any analysis based on a scientific
 28 method applied to the alleged alcohol” contrary to applicable provisions of Title 15 of the

1 California Code of Regulations (“Title 15” or “CCR”). (*Id.* ¶ 33). Defendant Clinton classified
 2 the RVR as serious, contrary to applicable provisions of Title 15. (*Id.* ¶ 34). Defendant Cruz
 3 interviewed Plaintiff regarding the incident, and Plaintiff alerted him to the Title 15 violations,
 4 but Cruz failed to take any action. (*Id.* ¶ 36).

5 At a preliminary hearing on January 16, 2017, Defendant Boado interviewed Plaintiff, and
 6 Plaintiff alerted him to the violations of Title 15 and asked that the RVR be “annul[led].” (*Id.*
 7 ¶ 37). Plaintiff also requested Defendant Boado provide a staff assistant, interpreter, witness, and
 8 evidence. (*Id.* at 7 ¶ 37). Plaintiff’s first language is Russian. (*Id.*). Defendant Boado did not
 9 fulfil Plaintiff’s requests or annul the RVR. (*Id.*).

10 At the same preliminary hearing, Defendant Barker also interviewed Plaintiff. (*Id.* ¶ 38).
 11 Plaintiff again requested a staff assistant, interpreter, witness, and evidence. (*Id.*). Defendant
 12 Barker did not fulfill the requests. (*Id.*). Defendant Barker declined to annul the RVR and
 13 notified Plaintiff that CDCR would proceed with a formal disciplinary hearing. (*Id.*).

14 On January 13, 2017, Defendant Johnson interviewed Plaintiff in response to his request
 15 for a staff assistant and translation at the disciplinary hearing. (*Id.* ¶ 39). Plaintiff informed
 16 Defendant Johnson of the deficiencies in the RVR and asserted that the proposed loss of good
 17 time credits was unwarranted by the CCR. (*Id.*). Johnson “affirmed [the] unlawful actions of the
 18 previous officers.” (*Id.*).

19 On January 20, 2017, Defendant Crenshaw served as the Senior Hearing Officer (SHO) at
 20 Plaintiff’s disciplinary hearing. (*Id.* at 8 ¶ 42). Crenshaw found Plaintiff guilty of the RVR and
 21 ordered Plaintiff to be penalized with loss of 120 days of good time credits. (*Id.* ¶ 43).

22 On February 7, 2017, Defendant Groves affirmed Defendant Crenshaw’s decision and
 23 penalty. (*Id.* ¶ 47). Defendant Ndoh and Vera later upheld the decisions by Defendants
 24 Crenshaw and Groves. (*Id.* ¶ 48).

25 Claim 2 – First Amendment Access to Courts

26 Plaintiff later submitted two appeals of the RVR finding him guilty of alcohol possession.
 27 (*Id.* at 9 ¶ 52). One appeal (Appeal 150) addressed procedural issues with the hearing, including
 28 the lack of the requested translator or staff assistant, a biased hearing officer, and destruction of

1 potentially exculpatory evidence. (*Id.*). The other appeal (Appeal 205) addressed the excessive
2 penalty of 120 days loss of good time credit. (*Id.*).

3 Defendant Donaldson cancelled Appeal 205 as a duplicate of Appeal 150. (*Id.* ¶¶ 51, 53).
4 The FAC asserts that in doing so, Donaldson “intentionally obstructed plaintiff’s right to petition
5 government for redress of his grievance protected by the First Amendment . . .” (*Id.* ¶ 53).
6 Defendants Vera and Ndoh affirmed Defendant Donaldson’s cancellation of the appeal. (*Id.*
7 ¶ 54). Defendants Voong and Briggs at the Office of Appeals upheld the decisions of Defendants
8 Donaldson, Vera, and Ndoh. (*Id.* ¶ 54).

9 Claim 3: Conspiracy to Violate Plaintiff’s Constitutional Rights

10 The FAC claims that unspecified Defendants:

11 conspired to impose, did impose and did affirm penalties that are
12 unconstitutionally excessive and grossly disproportionate to offense
13 and disciplinary hearing’s results. Defendants affirmed unlawful
acts of their fellow officers through failing to act in accordance to
prescribed rules and regulations.

14 (*Id.* at 10 ¶ 58). Plaintiff contends these acts amounted to cruel and unusual punishment in
15 violation of the Eighth Amendment. (*Id.* ¶ 60).

16 Relief Requested

17 As relief for the above claims, Plaintiff seeks a declaratory judgment, compensatory
18 damages of \$285,000 against each Defendant, punitive damages of \$235,000 against each
19 Defendant, a jury trial, costs, and any additional relief the court deems just. (*Id.* at 12 ¶¶ 68-73).

20 **APPLICABLE LAW AND ANALYSIS**

21 **A. Due Process Claims**

22 Plaintiff’s FAC sets forth various due process claims based on alleged flaws in the
23 documentation, investigation, and disciplinary hearing pertaining to Plaintiff’s Rule Violation
24 Report.² The Court examines each of these in seriatim.

25
26 ² In its prior screening order, the Court noted that Plaintiff’s claims seeking declaratory relief and
27 monetary damages based on an unconstitutional rule violation report, which resulted in loss of 120 days
28 good time credit, may be barred by *Heck v. Humphrey*, 512 U.S. 477, 481 (1994). However, given that
Plaintiff has now been released from custody, (*see* Doc. Nos. 12, 19), and cannot seek *habeas* relief, *Heck*
no longer applies. *See Nonnette v. Small*, 316 F.3d 872, 875–76 (9th Cir. 2002).

1 1. False RVR

2 The filing of a false disciplinary report by a prison official against a prisoner is not a per
3 se violation of the prisoner's constitutional rights. *See Muhammad v. Rubia*, 2010 WL 1260425,
4 at *3 (N.D. Cal. Mar. 29, 2010) (“[A] prisoner has no constitutionally guaranteed immunity from
5 being falsely or wrongly accused of conduct which may result in the deprivation of a protected
6 liberty interest. If a prisoner is afforded procedural due process in the disciplinary hearing,
7 allegations of a fabricated charge fail to state a claim under § 1983.”) (internal citation omitted)),
8 *aff'd* 453 F. App'x 751 (9th Cir. 2011); *Harper v. Costa*, 2009 WL 1684599, at *2-3 (E.D. Cal.
9 June 16, 2009) (“Although the Ninth Circuit has not directly addressed this issue in a published
10 opinion, district courts throughout California . . . have determined that a prisoner's allegation that
11 prison officials issued a false disciplinary charge against him fails to state a cognizable claim for
12 relief under § 1983.”), *aff'd* 393 F. App'x 488 (9th Cir. 2010).

13 The FAC contends that Defendant Dutra falsely filed charges of alcohol possession and
14 that Defendant Crenshaw, the senior hearing officer who conducted Plaintiff's disciplinary
15 proceeding, “contrived to concoct the constructive possession of alcohol” and “abused his
16 discretion” by penalizing Plaintiff 120 days of good time credits “in contravention of the state
17 statutes.” (Doc. No. 18 at 8 ¶¶ 43-44). However, as Plaintiff was previously advised, even if
18 Plaintiff's claim of innocence is true, there is no constitutional right to be free from false
19 accusations of prison disciplinary infractions, so long as the due process requirements of *Wolff v.*
20 *McDonnell* have been met (discussed further below). Thus, the FAC fails to state a claim based
21 on the mere fact that Plaintiff was falsely charged with an RVR for alcohol possession.

22 2. Destruction of Evidence

23 Next, liberally construed, Plaintiff's FAC contends that Defendant Dutra's destruction of
24 the alcohol Plaintiff allegedly had in his possession violated his Due Process rights, or
25 alternatively that the failure to present evidence of Plaintiff's possession of the alcohol violated
26 Plaintiff's due process rights. (*See* Doc. No. 18 at 6-7 ¶ 28, 37, 38, 40) (noting Plaintiff's
27 requests for “evidence”). Plaintiff claims the evidence would have been “potentially exculpatory”
28 but does not set forth why it would have been exculpatory as opposed to inculpatory. Plaintiff's

mere speculation as to the exculpatory nature of the evidence does not establish that he was harmed by destroying it. *See Martin v. Sullivan*, 2007 WL 2462076, at *7 (E.D. Cal. Aug. 28, 2007) (no claim stated where prisoner plaintiff failed to articulate prejudice from destruction of evidence related to RVR). Without alleging facts plausibly showing that Plaintiff was harmed by Defendant Dutra's actions, the FAC fails to state a due process claim.

As to the alleged failure to submit or provide Plaintiff with evidence of his alcohol possession, due process requires only that "some evidence" support the decision of the hearing officer. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). "The standard is not particularly stringent and the relevant inquiry is whether 'there is any evidence in the record that could support the conclusion reached'" *McDaniel v. Chavez*, 2014 WL 1333991, at *6 (E.D. Cal. Apr. 3, 2014) (citing *Hill*, 472 U.S. at 455-56). The FAC does not allege that there was no evidence in the record that could support Plaintiff's guilty finding, only that prison staff did not provide him physical evidence confirming the testing of the alcohol he allegedly possessed. This is insufficient to set forth a due process violation.

3. Violations of Title 15

There is no federal constitutional liberty interest in compliance with state prison regulations. *Solomon v. Felker*, 2013 WL 5375538, at *12 (E.D. Cal. Sept. 24, 2013) ("Plaintiff's allegation that the defendants failed to adhere to the prison's own institutional policies and procedures does not, by itself" give rise to a constitutional violation); *Sandin v. Conner*, 515 U.S. 472, 481–82, (1995) (recognizing prison regulations are "primarily designed to guide correctional officials in the administration of a prison" and are "not designed to confer rights on inmates"); *Hovater v. Robinson*, 1 F.3d 1063, 1068 n. 4 (10th Cir. 1993) ("[A] failure to adhere to administrative regulations does not equate to a constitutional violation."); *see also Armstrong v. Warden of USP Atwater*, 2011 WL 2553266, at *8 (E.D. Cal. June 24, 2011) (citing same). Indeed, Title 15 of the California Code of Regulations, which includes regulations governing the administration of state prisons, does not confer a private right of action for inmates to sue to enforce the regulations or to obtain damages. *Vasquez v. Tate*, 2012 WL 6738167, at *9 (E.D. Cal. Dec. 28, 2012) (finding no federal due process violation based on prison's failure to comply

1 with Title 15 because no authority establishes the existence of a private right of action).

2 The FAC asserts that actions by various Defendants violated Title 15 and therefore
 3 Plaintiff's constitutional rights. The FAC alleges that "Defendant Cervantez . . . affirmed [the
 4 RVR] without any analysis based on a scientific method applied to the alleged alcohol
 5 contradicting 15 CCR § 3290." (Doc. No. 18 at 6 ¶ 33). Further, Defendant Clinton "knowingly,
 6 arbitrarily and illegally classified the RVR as Serious, Division C in contravention of the 15 CCR
 7 § 3232 (e)(1) and § 3290." (*Id.* ¶ 34). Plaintiff advised Defendants Cruz, Boado, Barker, and
 8 Johnson of the "blatant violations" of the CCR by Defendants Cervantez and Clinton but they
 9 failed to take any remedial action. (*See id.* at 6-7). The FAC contends that Plaintiff's penalty for
 10 the RVR, including withholding of 90 days pay is "unauthorized by the CCR." (*Id.* at 8 ¶ 47).

11 However, because there is no liberty interest in compliance with state prison regulations,
 12 these alleged violations of state prison regulations, even if true, do not set forth cognizable
 13 constitutional violations. Thus, the FAC fails to allege a cognizable federal due process claim
 14 based on prison officials' alleged violation of Title 15.

15 4. Failure to Provide Staff Assistance or Translator at Disciplinary Hearing

16 Liberally construed, the FAC also asserts that Plaintiff suffered a due process injury
 17 because he was denied access to staff assistance or a translator. (Doc. No. 18 at 6-7 ¶¶ 37-38).

18 *Wolff* establishes the minimum due process that must be afforded to prisoners during
 19 prison disciplinary hearings. *See Wolff v. McDonnell*, 418 U.S. 539 (1974) ("[D]ue process
 20 requires procedural protections before a prison inmate can be deprived of a protected liberty
 21 interest in good time credits."). Due process requires: (1) advance written notice of at least 24
 22 hours of the disciplinary charges; (2) an impartial hearing body; (3) an opportunity, when
 23 consistent with institutional safety and correctional goals, to call witnesses and present
 24 documentary evidence in his defense; (4) a written statement by the factfinder of the evidence
 25 relied on and the reasons for the disciplinary action; and (5) assistance to the prisoner where the
 26 prisoner is illiterate or the issues presented are legally complex. *Id.* at 563-567. Prisoners bear
 27 the burden to demonstrate that they did not receive due process during their disciplinary hearing.
 28 *See Parnell v. Martinez*, 821 Fed. Appx. 866, 866-867 (9th Cir. 2020) (finding that the district

1 court “properly dismissed [the petitioner’s] due process claim challenging his disciplinary hearing
2 following his failure to submit to a urinalysis because [the petitioner] failed to allege facts
3 sufficient to demonstrate that he was not afforded all the process that was due.”).

4 Liberally construed, the FAC alleges Plaintiff’s due process rights were violated when
5 Defendants Boado, Barker, and Johnson failed to fulfil Plaintiff’s request for a staff assistant or
6 translator. The FAC does not allege either that the issues in Plaintiff’s disciplinary hearing were
7 unusually complex or that he is illiterate. Nor does the Court discern any complex issues
8 presented by a RVR alleging possession of alcohol. The FAC does assert that Russian is
9 Plaintiff’s first language and that he requested the assistance of an interpreter. The FAC does not
10 allege facts as to Plaintiff’s level of English language comprehension.

11 The extent to which due process may require the provision of interpreter services at a
12 prison disciplinary hearing is unclear. *See Garcia–Cortez v. Sanders*, 2013 WL 2417973, at *8
13 (C.D. Cal. May 31, 2013) (*citing Ferreira v. Dubois*, 963 F.Supp. 1244, 1256 (D. Mass. 1996),
14 which found that such a requirement would be an expansion of *Wolff*); *compare Powell v. Ward*,
15 487 F.Supp. 917, 932 (S.D.N.Y.1980) (noting that *Wolff* did not hold that an interpreter must be
16 provided for non-English speaking inmates, but finding *Wolff*’s treatment of illiterate inmates
17 “instructive” in creating a due process requirement in the form of injunctive relief for the Spanish
18 speaking inmates bringing 42 U.S.C. § 1983 action in *Powell*); *Gabai v. Jacoby*, 800 F.Supp.
19 1149, 1156 (S.D.N.Y.1992) (finding no due process violation in 42 U.S.C. § 1983 action for
20 failure to provide interpreter at disciplinary hearing, where inmate did not rebut sworn statements
21 that he understood spoken and written English and was able to function in English, or show how
22 the failure to provide an interpreter prejudiced him); *see also Encarnacion-Montero v. Sanders*,
23 2014 WL 9913503, at *6 (C.D. Cal. June 4, 2014) (rejecting plaintiff’s due process claims after
24 finding not credible statements that he could not speak, read, or understand English), *report and*
25 *recommendation adopted*, 2015 WL 3823891 (C.D. Cal. June 18, 2015).

26 Even assuming the Court were to find that due process requires access to an interpreter for
27 non-English speakers in prison disciplinary hearings, there is insufficient evidence Plaintiff
28 needed one. The Court notes that Plaintiff’s pleadings have articulated sophisticated legal

1 concepts in good English and provide detailed descriptions of the prison legal proceedings at
2 which he purportedly needed assistance. The Court thus infers that Plaintiff was adequately able
3 to understand the applicable disciplinary proceedings and did not suffer a due process violation
4 due to lack of assistance or translation.

5 5. Request for Witnesses

6 The FAC asserts that Plaintiff made requests to Defendants Boado and Barker for a
7 “witness” at his disciplinary hearing but was denied. (Doc. No. 18 at 6-7 ¶¶ 37-38). As noted
8 above, due process requires that a prisoner be provided an opportunity at a disciplinary hearing,
9 when consistent with institutional safety and correctional goals, to call witnesses and present
10 documentary evidence in his defense.

11 “The Supreme Court’s decision in *Wolff* bestows a substantial amount of discretion upon
12 prison officials to decide whether and when to call live witnesses at a disciplinary hearing.”
13 *Buren v. Waddle*, 2016 WL 5890030, at *2 (E.D. Cal. Oct. 11, 2016). Prison officials may
14 choose to refuse an inmate’s request to call witnesses for reasons of “irrelevance, lack of
15 necessity, or the hazards presented in individual cases.” *See Wolff*, 418 U.S. at 566. In *Wolff* the
16 court suggested it would be “useful,” but did not require, that prison officials provide written
17 reasons for denying an inmate the right to call live witnesses. *Baxter v. Palmigiano*, 425 U.S.
18 308, 323 (1976). Meanwhile, “[A]s a general rule, inmates ‘have no constitutional right to
19 confront and cross-examine adverse witnesses’ in prison disciplinary hearings.” *Santibanez v.*
20 *Havlin*, 750 F. Supp.2d 1121, 1128 (E.D. Cal. 2010)

21 Here, the FAC does not specify whether Plaintiff requested to call witnesses in his
22 defense, whether he requested that prison officials present witnesses to support their claims, or
23 something else entirely. It is also unclear what justification, if any, Defendants Barker and Boado
24 provided in denying Plaintiff’s requests. Without these details as to Plaintiff’s request for
25 “witness” and Defendants’ responses, the FAC fails to state a claim based on Defendants Barker
26 and Boado’s actions.

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28 ///

6. Denial of Plaintiff's Grievance and Appeals

"A prison official's denial of a grievance does not itself violate the constitution." *Penton v. Johnson*, 2019 WL 6618051, at *6 (E.D. Cal. Dec. 5, 2019) (quoting *Evans v. Skolnik*, 637 F. App'x 285, 288 (9th Cir. 2015)). "An allegation that a prison official inappropriately denied or failed to adequately respond to a grievance, without more, does not state a claim under § 1983." *Evans*, 637 F. App'x at 288, citing *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) ("Ramirez's claimed loss of a liberty interest in the processing of his appeals does not satisfy this standard, because inmates lack a separate constitutional entitlement to a specific prison grievance procedure."); *see also Alford v. Gyaami*, 2015 WL 3488301, at *10 n.2 (E.D. Cal. June 2, 2015) ("Even if prison officials delay, deny, or erroneously screen out a prisoner's inmate grievance, they have not deprived him of a federal constitutional right."); *Wright v. Shannon*, 2010 WL 445203, at *5 (E.D. Cal. Feb. 2, 2010) (allegations that prison officials denied or ignored inmate appeals failed to state a cognizable claim under the First Amendment).

Liberally construed, the FAC alleges that the various officials who conducted Plaintiff's grievance and appeals, including Defendants Groves, Ndoh, Vera, and Donaldson, denied his due process rights because they refused to reverse Defendant Crenshaw's guilty finding on Plaintiff's RVR. (See Doc. No. 18 at 8-9 ¶¶ 47-48). However, as the Court previously advised Plaintiff, "an incorrect decision on an administrative appeal, or the failure to handle it in a particular way, does not amount to a violation of petitioner's right to due process." *Carter v. Babcock*, 2011 WL 6032687, at *6 (E.D. Cal. Dec. 5, 2011). Likewise, the mere fact that these Defendants declined to grant Plaintiff's grievance or appeals does not set forth a constitutional claim.

B. First Amendment Access to Courts Claim

Prisoners "have a constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). Such "right extends to prison grievance procedures." *Carr v. Stelzer*, 733 F. App'x 361, 362 (9th Cir. May 2, 2018) (citations omitted). Where a prisoner is required to exhaust the administrative grievance process, "a prisoner's fundamental right of access to the courts hinges on his ability to access the prison grievance system." *Bradley*, 64 F.3d at 1279. Accordingly, interference with the grievance process may, in certain circumstances, implicate the

1 First Amendment. However, as noted above, prisoner have no constitutional right to a particular
2 grievance process, and there are no constitutional requirements regarding how a grievance system
3 is operated, even if plaintiff believes the process to be unfair or not accurate. *See Ramirez*, 334
4 F.3d at 860; *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). “Even if prison officials delay,
5 deny, or erroneously screen out a prisoner’s inmate grievance, they have not deprived him of a
6 federal constitutional right.” *Alford*, 2015 WL 3488301, at *10 n.2.

7 Here, the FAC alleges that Defendant Donaldson violated Plaintiff’s First Amendment
8 right to access the courts when he “intentionally and arbitrarily cancelled plaintiff’s appeal No.
9 ASP-M-17-205 as a duplicate of appeal No. ASP-M-17-150.” (Doc. No. 18 at 9 ¶ 51). However,
10 Plaintiff has no right to a particular grievance process. Even if Plaintiff disagrees with Defendant
11 Donaldson’s decision to cancel the second appeal as duplicative, this does not give rise to a
12 constitutional claim. *See Alford*, 2015 WL 3488301, at *10 n.2.

13 **C. Conspiracy**

14 To establish a conspiracy to violate one’s rights under §1983, a plaintiff must plead facts
15 supporting “(1) the existence of an express or implied agreement among the defendant officers to
16 deprive him of his constitutional rights, and (2) an actual deprivation of those rights resulting
17 from that agreement.” *See Avalos v. Bacca*, 596 F.3d 583, 592 (9th Cir. 2010); *Franklin v. Fox*,
18 312 F.3d 423, 441 (9th Cir. 2002).

19 The FAC is devoid of any fact demonstrating an express or implied agreement among any
20 of the Defendants to deprive Plaintiff of his constitutional rights. It only makes the conclusory
21 allegation that unspecified “Defendants conspired to impose, did impose and did affirm penalties
22 that are unconstitutionally excessive and grossly disproportionate to offense and disciplinary
23 hearing’s results.” (Doc. No. 18 at 10 ¶ 58). While Plaintiff is entitled to a liberal interpretation
24 of his FAC, the Court cannot supply the essential elements of a claim that are not pled. *Ivey v.*
25 *Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Moreover, as noted above the Court does not
26 have to accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions
27 of fact. *Western Mining Council*, 643 F.2d at 624. Because the FAC makes only conclusory
28

1 allegations regarding the existence of an agreement among the parties, and fails to specify which
2 parties are involved, it fails to meet the first prong of a conspiracy claim. Further, as discussed
3 above, Plaintiff's FAC fails to allege a cognizable claim as to any deprivation of his constitutional
4 rights. Therefore, the FAC fails on both prongs required to prove a conspiracy and the
5 undersigned recommends the district court dismiss Plaintiff's conspiracy claim.

6 ///

7 ///

8 **CONCLUSION AND RECOMMENDATION**

9 Based on the above, the undersigned finds Plaintiff's FAC fails to state any cognizable
10 claim. The FAC suffers from many of the same pleading deficiencies that the undersigned
11 identified and explained to Plaintiff in screening his original Complaint. Plaintiff reasserted
12 many of the same claims that were asserted in his Complaint, including conspiracy and due
13 process violations based on the allegedly false RVR, his disciplinary hearing, and the denial of his
14 grievances and appeals. Despite being provided with guidance and the appropriate legal
15 standards, Plaintiff was unable to cure the deficiencies identified above. Thus, the undersigned
16 recommends that the district court dismiss the FAC without further leave to amend. *McKinney v.*
17 *Baca*, 250 F. App'x 781 (9th Cir. 2007) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
18 Cir.1992)) (noting discretion to deny leave to amend is particularly broad where court has
19 afforded plaintiff one or more opportunities to amend his complaint).

20 Accordingly, it is **RECOMMENDED**:

21 The First Amended Complaint (Doc. No. 18) be dismissed under § 1915A for failure to
22 state a claim.

23 ///

24 **NOTICE TO PARTIES**

25 These findings and recommendations will be submitted to the United States district judge
26 assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
27 days after being served with these findings and recommendations, a party may file written
28 objections with the Court. The document should be captioned "Objections to Magistrate Judge's

Findings and Recommendations.” Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: December 7, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE